

FIRE COUNSEL NOTES



New Federal OSHA Requirements Are Coming

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By now most readers know (or should know) that the United States Department of Labor Occupational Safety and Health Administration (US OSHA) has put forward a proposed major rewriting of the “Fire Brigade” regulations which have applied to the Illinois Fire Service following a 1985 court order which imposed the Illinois Health and Safety Act on public employees in Illinois (including volunteer fire personnel). This court order was ultimately followed, after considerable controversy, by the Illinois Department of Labor’s adoption of the Federal OSHA Fire Brigade and other Federal OSHA regulations applicable to fire departments in Illinois. Illinois is now what is referred to as a “State Plan” jurisdiction meaning, that all Federal OSHA Regulations apply in Illinois automatically. Accordingly, if the proposed regulation put forward in the Federal Register (Vol. 89, No. 24) on February 5, 2024 is implemented by Federal OSHA, it will automatically apply to all fire departments in the State of Illinois regardless of size, department type, or composition (career or non-career). The proposed regulations, which will substantially rewrite the current regulations (29 CFR Part 1910) are now open for public comment prior to final adoption. The original deadline for comments of May 6, 2024 has now been extended to **June 21, 2024**. For the reasons stated below, **all** fire protection districts in Illinois need to weigh in on these new proposed regulations. A complete analysis of the proposed regulations (which are now referred to as the “Emergency Response Standard”) is

beyond the scope of this article, however, the following are some highlights for readers to consider:

- The new regulations will “incorporate by reference” (IBR) 22 National Fire Protection Association (NFPA) Standards making compliance with those standards mandatory for all fire departments subject to the OSHA Regulations.
- Additionally, NFPA is simultaneously combining and consolidating some of the standards referenced in the new rule, causing more confusion for future compliance.
- The new regulations will use 14 NFPA Standards as the basis for new OSHA Regulations. [The NFPA Standards will not be incorporated verbatim, but they will be the source for the new rules.]
- Federal OSHA indicates that the proposed regulations are “performance based,” focus on “a desired result,” and are needed because current rules do not address the “full range of hazards” in emergency operations and are a “patchwork.”
- While Federal OSHA states throughout the Federal Register posting that most volunteer fire department organizations will not be subject to the new rules and, accordingly, that the burden of the new regulations will not affect those types of fire departments, this premise is not applicable in Illinois since as noted above, Illinois operates as a “State Plan” which means that all fire

departments in Illinois must comply with the Federal OSHA Regulations.

- As a justification for the new standard, Federal OSHA indicates that firefighter injuries and fatalities are caused by a number of factors such as limited responder knowledge and recognition of hazards; inadequate pre-incident emergency response planning; and unsafe operations.
- Among other things, the new regulation will mandate a written incident management system for all emergency response operations, the use of turnout clothing and other personal protective equipment (PPE) that is determined to be appropriate, and minimum mandatory standard training. While these concepts are currently inherent in the present regulations, the new regulations will be much more specific. For example, 29 CFR Part 1910.156 currently sets a training standard which is based upon the provision of training which is sufficient for the duties of the firefighter and making the employer (fire protection district) responsible to train to that requirement. The new regulations will specify in significantly greater detail exactly what those training requirements must be in order to be in compliance with the regulations and will require specific ongoing training and testing.
- The new regulations will focus to a great degree on the health effects of emergency response activities

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including exposures to combustion products, contaminants, and infectious diseases; acute and chronic health conditions; behavioral health issues; and workplace violence. To address this, there will be more specific regulations regarding policies, operating procedures, protective equipment and practices which limit exposure to hazardous substances and will impose a requirement for "medical surveillance."

- The explanatory material included with the proposed rulemaking contains a great deal of statistical information including cost estimates regarding the economic feasibility of imposing the new regulation. Whether those cost estimates are applicable or accurate as a justification for the new regulations is open to question. This is due in part to the premise of Federal OSHA that volunteer fire departments will not be subject to the application of the new rules (except in State Plan jurisdictions of which Illinois is one).
- Federal OSHA estimates that the compliance average cost for small public State Plan entities would range between \$14,397.00 and \$15,389.00 depending on the type of fire department organization. These cost estimations, in addition to being subject to question, do not take into account the non-pecuniary compliance burden placed on unpaid (or only nominally compensated) fire department personnel. For example, the new regulations will impose recordkeeping requirements regarding calls and incidents which go well beyond what is currently required. Determining, tracking, and monitoring exposures, persons exposed, follow up medical evaluations, and other recordkeeping and administrative aspects will increase significantly under the new regulations. The extent to which fire departments will be capable of compliance is questionable and may cause a significant diminution of participation in the volunteer and nominally compensated fire service in

Illinois. Nevertheless, Federal OSHA concludes that the proposed rules do not impose an unfunded mandate on the fire service. This is clearly an unrealistic position.

- Illinois OSHA will be required to implement the new regulations within six months of the date that the final Federal Regulations are promulgated. While there may be some aspects of the new regulations which will have phase-in periods, from the six-month mark, districts will be under the new rules.

In its review of the proposed regulations, Illinois OSHA has identified at least the following operational requirements that will apply to Illinois emergency response organizations:

- A written Emergency Response Plan that meets 14 additional requirements will be mandated.
- Departments will be required to conduct Community Vulnerability Assessments which will include identification of structures needing a pre-plan and vacant structures.
- A written Risk Management Plan will be required.
- Emergency responder tier classifications will be required with annual evaluations of personnel.
- A Health and Fitness Program and Fitness Assessments will be required.
- A complete initial medical evaluation will be required, along with subsequent required medical reevaluations at set intervals. (At the district's expense)
- Personnel exposed to combustion products more than 15 times per year must receive a special evaluation based on NFPA 1582.
- Training must include annual skill checks and must include particular topics including risk management, health and safety policies, incident management, accountability, CPR and AED skills.
- Interior firefighters, vehicle operators, officers, marine operations personnel, technical rescue teams, etc. must all meet NFPA standards (or equivalent) in each of these areas.
- New station facilities must meet requirements such as sprinklering.

- There must be decontamination, disinfection, and cleaning facilities in all stations.
- Sleeping areas must have smoke and CO alarms.
- PPE, vehicle, and pump inspections will have to meet NFPA standards.
- Incident medical monitoring and rehabilitation will be required.
- Standard Operating Procedures (SOPs) will have to be prepared and meet required content standards to comply.

The foregoing bullet points identify only a few of the significant issues presented by the proposed Federal OSHA regulations. More information will be forthcoming and numerous fire service sources and organizations as the weeks progress to the June 21, 2024 comment period deadline. However, all local fire protection districts must weigh in on the impacts of this new rule on their operation. While firefighter safety is a paramount concern of all fire service organizations, compliance with the new proposed regulations will, in all likelihood, be expensive and much more difficult for many fire protection districts in Illinois. For that reason, districts are urged to do the following:

- Submit a comment to Federal OSHA by **June 21, 2024** which identifies the compliance difficulties for their particular fire organization if the new regulations are put into effect. [Comments to Federal OSHA can be submitted electronically to <https://www.regulations.gov> or on paper to Occupational Health and Safety Administration, 200 Constitution Avenue NW, Washington, D.C. 20210. Refer to Docket No. OSHA-2007-0073] in all submittals.
- Contact the district's federal legislative representatives (Senators Durbin and Duckworth, and its Member of Congress representing the district's geographic area.) In those communications also refer to Docket No. OSHA-2007-0073. Districts needing contact information for these representatives can contact the IAFFPD office.

Bottom line: This is serious.

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Other Reminders

While the proposed OSHA rule making is the “Elephant in the Room” at this point for the Illinois Fire Service, there are some other pending matters of which districts should be aware:

- The Office of the State Fire Marshal has recently put forward proposed amendments to the requirements for participation and certification of fire protection personnel. This would change a number of provisions in 41 Ill. ADM. C. Code 141. These proposed regulations are indicated to be updates to the current rules regarding individual certification requirements by conforming to NFPA Standards. New rules will also update and clarify qualifications, procedures, and consequences for specific certification requirements, course approval submissions, and instructor requirements. A new

provision for “State Fire Marshal Arson Investigator Special Agent” certification will be included as well.

- In early January, the Illinois Department of Public Health (IDPH) issued proposed regulations regarding the provision of emergency medical services. These regulatory changes would impact, in particular, testing for EMS certification by requiring, among other things, licensure examinations to be conducted through the National Testing Program. It also requires paramedic education to be “accredited.” The proposed regulations also set new requirements for the use of paramedics to perform SCBA medical screening evaluations. These regulations are pending at this time. The IAFFPD did submit comments with regard to the proposed regulations.
- Decennial Efficiencies Committee Compliance Deadline. Districts are reminded that no later than December 10, 2024, they will be required to submit the report of their Decennial Efficiencies Committee

work. [The deadline for some districts may be earlier depending on the date the district’s committee was formed.] Districts which have not commenced compliance with this law need to do so in short order. The law requires the appointment and formation of the committee (for fire protection districts the committee consists of the Board of Trustees, the Fire Chief, and at least two members of the community). Additional information about this process has been distributed previously by the Association and districts should undertake to proceed with preparation of the report which must be filed with the “County Administration” of each county in which the district is located by the deadline date. The committee must meet at least 3 times, post separate notices of its meetings, and comply in all respects with the Open Meetings Act. ■

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